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3 UNITED STATES DISTRICT COURT
4 NORTHERN DISTRICT OF CALIFORNIA
5 SAN JOSE DIVISION
6

7 THOMAS HEATON SPITTERS,

8 Plaintiff,

9 v.

10 GARY LOEBNER,

11 Defendant.

Case No. [18-cv-02759-BLF](#)

**ORDER ADOPTING REPORT AND
RECOMMENDATION; ORDERING
PLAINTIFF TO FILE AMENDED
COMPLAINT AND PAY FEES BY
OCTOBER 4, 2018**

[Re: ECF 14]

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14 The Court has reviewed the Report and Recommendation of Magistrate Judge Nathaniel
15 M. Cousins (“Report”) to dismiss this action without prejudice because Plaintiff Thomas Heaton
16 Spitters (“Plaintiff”) (1) failed to satisfy 28 U.S.C. § 1915(a)(1)’s requirements for proceeding in
17 forma pauperis and has not paid the court’s filing fee; (2) failed to provide sufficient notice of his
18 claims in his complaint; and (3) failed to allege that the Court has subject matter jurisdiction. ECF
19 14. No objections to the Report and Recommendation have been filed and the deadline to object
20 has lapsed. *See* ECF 17 (setting deadline of August 30, 2018).

21 The Court finds the Report correct, well-reasoned and thorough, and adopts it in every
22 respect. Plaintiff failed to amend his application or pay the necessary filing fee in this case after
23 Judge Cousins denied his in forma pauperis application, and he failed to amend his complaint to
24 provide sufficient notice to Defendant of his claims and to plausibly allege that this Court has
25 subject matter jurisdiction over this action.

26 However, because neither the order denying the in forma pauperis application (ECF 8) nor
27 the order requiring amendment (ECF 9) notified Plaintiff that the action might be dismissed for
28 failure to comply, this Court will allow Plaintiff one final opportunity to pay the court filing fee

1 and file an amended complaint that cures the deficiencies set forth in Judge Cousins's July 10,
2 2018 Screening Order (ECF 9), including adding allegations to demonstrate plausibly that this
3 Court has subject matter jurisdiction over Plaintiff's claims. Payment of the filing fee is not a
4 guarantee that this case will go forward on the merits if Plaintiff's complaint remains insufficient.

5 Plaintiff is ORDERED to pay the filing fee and file his amended complaint on or before
6 **October 4, 2018**. Once Plaintiff files his amended complaint, he is also responsible for serving
7 Defendant within 90 days of the filing of his complaint. Failure to comply with this order will
8 result in dismissal of this case.

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10 **IT IS SO ORDERED.**

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12 Dated: September 7, 2018



BETH LABSON FREEMAN
United States District Judge